



# Avon Weir Act 1992

## 1992 CHAPTER v

### PART I

#### PRELIMINARY

#### 1 Short title

This Act may be cited as the Avon Weir Act 1992.

#### 2 Interpretation

(1) In this Act, unless the subject or context otherwise requires—

“the Act of 1965” means the Compulsory Purchase Act 1965;

“the city” means the city of Bristol;

“the City Council” means the council of the city;

“the Corporation” means The Bristol Development Corporation;

“the Feeder Canal” means the canal or cut authorised by the Act 43 Geo. 3 c. cxl as altered from time to time, and known as the Feeder Canal, including all basins and other works constructed in connection therewith, but excluding any land within the limits of deviation for Work No. 3 which lies to the riverside of a line drawn between reference points ST59960 72359 and ST59994 72314;

“the fire authority” has the meaning given by the Fire Services Act 1947;

“the Floating Harbour” means the City Docks of the City Council known as the Floating Harbour and all basins and other works constructed in connection therewith, but not including any land within the limits of deviation for Work No. 2;

“the highway authority” means Avon County Council in its capacity as highway authority;

“the impounded river” has the meaning given by subsection (2) below;

“the level of high water” means the level of mean high-water springs;

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“the limits of deviation” means the limits of deviation shown on the deposited plans;

“mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“new rights” means rights to be created in favour of the Corporation, including rights restrictive of the user of land;

“the port” means the port and harbour of Bristol;

“the port authority” means the City Council as port authority for the port and, for the purpose of any provision in this Act which affects any part of the river, includes any successor of the City Council as port authority for that part;

“reference point” means Ordnance Survey National Grid Reference Point;

“the river” means the river Avon;

“the rivers authority” means the National Rivers Authority;

“tidal works” means, subject to section 24 (Status of works in impounded river) of this Act, so much of the works as is on, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the urban development area” means the area from time to time designated as the area in respect of which the Corporation is urban development corporation;

“vessel” means every description of vessel, whether with or without means of propulsion of any kind, and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968;

“water company” means Wessex Water Services Limited;

“the weir” means the weir and other works forming Work No. 1; and

“the works” means the works authorised by this Act.

(2) “The impounded river” means—

- (a) that part of the river lying between the downstream limit of deviation for Work No. 1 and Hanham Mills;
- (b) such widening or lateral extension of the part of the river referred to in paragraph (a) above, and such canals, cuts, inlets, pools, lakes or other watercourses, as may from time to time be created, formed or constructed along the banks thereof or as are connected therewith, whether immediately or otherwise;
- (c) the waterways leading to and the waters within the limits of deviation for Works Nos. 2 and 3; and
- (d) the banks of the part of the river and of the widenings, watercourses, waterways and other things referred to in paragraphs (a), (b) and (c) above and a space of 4·57 metres in width on each bank above the line of high-water mark of ordinary spring tides as existing on 1st July 1972 being that width of the land adjoining those banks which is comprised in the port;

not being, in the case of the waterways and other things referred to in paragraphs (b), (c) and (d) above, any part of the Feeder Canal or the Floating Harbour.

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- (3) All directions, distances and reference points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after such direction, distance and reference point.
- (4) Unless the context otherwise requires, any reference to a work identified by a number of such work shall be construed as a reference to the work of that number authorised by this Act.

### **3 Incorporation of general enactments**

The provisions of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of lands near the railway during the construction thereof, so far as the same are applicable for the purposes of and are not inconsistent with this Act, are incorporated with this Act and, as so incorporated, shall have effect as if—

- (a) for the words “the period by the special Act limited for the completion of the railway” there were substituted the words “the period of five years from the commencement of the construction of the works authorised by the special Act”;
- (b) the expression “the company” meant the Corporation; and
- (c) the expression “the railway” meant the works authorised by this Act and “the centre of the railway” meant the centre line of the works respectively.

### **4 Application of Part I of Compulsory Purchase Act 1965, etc**

- (1) (a) Part I of the Act of 1965 (except sections 4 and 27 thereof, and paragraph 3 (3) of Schedule 3 thereto), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies  
to a compulsory purchase to which Part II of the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981.
  - (b) In section 11 (1) of the Act of 1965, as so applied, for the words “fourteen days” there shall be substituted the words “three months”.
  - (c) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.
- (2) Part II of Schedule 2 to the Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this Act as if this Act were a compulsory purchase order.
- (3) (a) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply to the compulsory acquisition of land under this Act as if this Act were a compulsory purchase order.
  - (b) The notice required by section 3 (1) of the said Act of 1981 as so applied shall be a notice containing the particulars specified in section 3 (3) and given at any time following the coming into operation of this Act.
  - (c) In section 3 (2) of the said Act of 1981 as so applied, for “(1) (b)” there shall be substituted “(1)”.

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## PART II

### WORKS

#### 5 Power to construct works

- (1) Subject to the provisions of this Act, the Corporation may in the lines or situations shown on the deposited plans and within the limits of deviation and according to the levels shown on the deposited sections make and maintain in the city the works described in Schedule 1 to this Act, together with all necessary works and conveniences connected therewith or incidental thereto.
- (2) Subject to section 5 of the Telecommunications Act 1984, the Corporation may install and maintain telecommunication apparatus and run telecommunication systems (such apparatus and systems having the meanings given by that Act, including the extended definition of telecommunication apparatus in Schedule 2 thereto) on or over land, whether or not a street, for the purpose of telecommunication or of electrical communication between any place and any part of the works or between different parts of the works.
- (3) The Corporation may within the limits of deviation, including the vertical limits prescribed by section 8 (Power to deviate) of this Act, alter, replace or re-lay any of the works described in Schedule 1 to this Act and any works authorised by section 7 (Further works and powers) of this Act.
- (4) Section 109 of the Land Drainage Act 1991 shall not apply to the construction of the works.
- (5) Section 9 of the Salmon and Freshwater Fisheries Act 1975 shall apply to the making and maintenance of the fish pass comprised in Work No. 1 as it applies to the making and maintenance of a fish pass made pursuant to a notice under subsection (1) of that section.

#### 6 Street works

- (1) In this section—
  - “the Act of 1950” means the Public Utilities Street Works Act 1950;
  - “relevant protective provision” means any provision of section 49 (For protection of electricity, gas and water undertakers), section 50 (For protection of sewers of Wessex Water Services Limited), section 53 (For protection of port authority), section 54 (For protection of highway authority) or section 55 (For protection of British Railways Board) of this Act.
- (2) Subject to subsection (3) below the works authorised by section 5 (Power to construct works), section 7 (Further works and powers) and section 9 (Power to make subsidiary works) of this Act shall be deemed to be undertakers' works for the purposes of Part I of the Act of 1950.
- (3) Neither Part I of the Act of 1950 nor Part III of the New Roads and Street Works Act 1991 shall apply so as to regulate the relations of the Corporation with any body to which any relevant protective provision applies.

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## **7 Further works and powers**

- (1) The Corporation may on the land specified in Schedule 2 to this Act from time to time construct, maintain and remove such flood embankments and other works for the alleviation or prevention of flooding as it considers necessary or expedient.
- (2) After the weir is in operation, the Corporation may from time to time take down and remove the whole or any part of Netham Dam in the city to provide a navigable channel of a width not less than 6 metres to such height as it thinks fit not exceeding 4.2 metres above Ordnance Datum (Newlyn).
- (3) The Corporation may fill in and reclaim the banks of the river forming part of the lands numbered 98 and 102 on the deposited plans.
- (4) For the avoidance of doubt the works authorised by subsection (1) above are for all purposes to be treated as drainage works in connection with a main river within section 165 (1) (a) or (b) of the Water Resources Act 1991 and shall be maintainable accordingly.
- (5) Sub-paragraphs (1) and (2) of paragraph 5 of Schedule 21 to the Water Resources Act 1991 shall apply in relation to the exercise by the Corporation of its powers under this section as they apply in relation to the exercise by the rivers authority of any powers under subsections (1) to (3) of the said section 165.

## **8 Power to deviate**

In constructing the works described in Schedule 1 to this Act the Corporation may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation for those works; and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or 3 metres downwards.

## **9 Power to make subsidiary works**

- (1) Subject to the provisions of this Act, the Corporation may from time to time within the limits of deviation and the limits of land to be acquired or used erect, construct and maintain, whether temporarily or permanently, all such necessary works and conveniences as may be requisite or expedient for the purposes of, or in connection with, the construction, maintenance and use of the works.
- (2) On the completion of each of the works the Corporation shall remove all temporary works placed by it under the powers of this section.
- (3) The Corporation may, for the purposes of, or in connection with, the works, on any lands abutting on lands within the limits of deviation execute or do, by agreement with the owners and occupiers of the first mentioned lands, any of the works or things referred to in subsection (1) above and any works necessary or convenient for the purpose of providing or facilitating access to or from all the said lands or for preserving the amenities thereof.
- (4) In the exercise of the powers conferred by this section, the Corporation shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any damage sustained by them by reason of the exercise by the Corporation of such powers; and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

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## **10 Pipes, etc., under or over tidal waters or tidal lands**

Notwithstanding anything in this Part, any pipes to be laid or placed under the powers contained in this Part or telecommunication apparatus or telecommunication systems installed under subsection (2) of section 5 (Power to construct works) of this Act, under or over any tidal waters or tidal lands below the level of high water shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Secretary of State may require.

## **11 Dredging and other operations in river**

- (1) The Corporation may—
  - (a) subject to the consent required by section 47 (Crown rights) of this Act, dredge, scour and cleanse the banks and bed of the impounded river;
  - (b) in connection with, or for the purposes of, the works, moor or anchor vessels temporarily in the river.
- (2) No materials so dredged by the Corporation under subsection (1) above shall be deposited in tidal waters below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

## **12 Work No. 1 deemed to be constructed under impounding licence**

- (1) Work No. 1 shall be deemed to have been constructed under a licence under section 25 of the Water Resources Act 1991 granted by the rivers authority and, except as may be otherwise provided by this Act, the provisions of the said Act of 1991 relating to licences granted under section 25 of that Act shall apply to the licence deemed by this section to have been granted under that section as they apply to those so granted.
- (2) Notwithstanding the provisions of section 1 of the Reservoirs Act 1975, it is hereby declared that so much of the impounded river as is upstream of the weir is not, by virtue of the retention of water by means of the weir, to be taken to be a reservoir for the purposes of that Act or for the purposes of the Reservoirs (Safety Provisions) Act 1930.

## **13 Agreements with owners of land and others for construction of works**

- (1) The Corporation may enter into and carry into effect agreements or arrangements with the port authority, the rivers authority, the water company, the city council or the owners of, or other persons interested in, any land in or through which any of the works are or may be constructed, or the drainage of which may be affected by the construction of any of the works, for or with respect to the doing of anything which may be rendered necessary or convenient by reason or in consequence of the exercise of the powers of this Act.
- (2) Any such agreement may provide for—
  - (a) the payment by the Corporation of, or the making of contributions by the Corporation towards, the cost incurred, or to be incurred, by the port authority, the rivers authority, the water company, the City Council or any such owners or other persons in or in connection with the doing of any such thing; or
  - (b) the payment by the Corporation of compensation for any injury suffered by the port authority, the rivers authority, the water company, the City Council or

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any such owners or other persons by reason or in consequence of the execution by the Corporation of the works.

#### **14 Footpaths**

In the construction of the works authorised by subsection (1) of section 7 (Further works and powers) of this Act the Corporation may raise the level of so much of the Avon Walkway as lies between the points marked “A”, “B”, “C”, “D” and “E” on the deposited plans.

#### **15 Temporary stoppage of roads, bridleways and footpaths**

- (1) The Corporation during and for the purpose of the execution of the works may temporarily stop up and divert and interfere with any road, bridleway or footpath (including any walkway created by agreement under section 35 of the Highways Act 1980) and may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road, bridleway or footpath from passing along and using the same.
- (2) The Corporation shall provide reasonable access for persons on foot, with or without animals, bona fide going to or from any such land, house or building.
- (3) The Corporation shall not exercise the powers of this section without the consent of the highway authority whose consent shall not be unreasonably withheld and any question as to whether such consent has been unreasonably withheld shall be referred to and settled by arbitration.

#### **16 Temporary closing of river in connection with works**

- (1) Notwithstanding anything in any other enactment or in any rule of law, the Corporation may temporarily close the river between New Brislington Bridge and Ashton Swing Bridge, or any part thereof, to navigation in the course of executing any works or doing any things authorised by or under this Act.
- (2) The Corporation shall not exercise the powers of subsection (1) above without the consent of the port authority and, in the exercise of those powers—
  - (a) the Corporation shall so execute or do such works or things as to ensure that at any time no more of the river is so closed than is reasonably necessary in all the circumstances; and
  - (b) if it becomes necessary to close the river completely to navigation, the Corporation shall use its best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the river and that the minimum interference is caused to persons who may be using or intending to use the river for the purposes of trade or business.
- (3) The Corporation shall not be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under subsection (1) above.

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## **17 Power to use bed and banks of watercourses**

- (1) Subject to the provisions of this Act, the Corporation may for the purposes of the works enter upon and use so much of the bed or banks of any watercourse as is within the limits of deviation and as may be required for those purposes, and it may also for the purposes of executing and placing temporary works and conveniences in connection with the works occupy and use temporarily so much of such bed and banks within the said limits as may be required for those purposes or any of them.
- (2) The Corporation shall, not less than 14 days before entering upon and using the bed or banks of any watercourse, give notice of its intention to the port authority, the rivers authority and to the occupier of the land comprising such beds or banks, and shall pay compensation to all persons interested in that land for any damage sustained by them or liability to which they may become subject in respect of that land by reason of the exercise of the powers of this section; and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

## **18 Power to take, pump and discharge water**

- (1) Except as provided in subsections (2) to (6) below, notwithstanding anything contained in any other enactment, the Corporation may, for the purposes of or in connection with the exercise of its functions under Part II or subsection (10) of section 35 (Operation of weir, etc.) of this Act—
  - (a) take, impound and use water from, and discharge water into, the river or any sewer, drain or watercourse;
  - (b) take or discharge from or into the river any water which it requires to take or discharge; or
  - (c) discharge any water which it finds into the river or into any sewer, drain or watercourse;
 and for any of those purposes may, within the limits of deviation, lay down, take up and alter conduits, pipes and other works and conveniences and make any convenient connections with the river or (as the case may be) with the sewer, drain or watercourse.
- (2) The Corporation shall not, under the powers of this section discharge any water directly or indirectly or make any opening into any sewer or drain without—
  - (a) in respect of any sewer or drain in which the water company has an interest, obtaining the consent of the water company; and
  - (b) consulting any other person or body appearing to have an interest in the sewer or drain.
- (3) Nothing in this section shall exempt the Corporation from the provisions of the Prevention of Oil Pollution Act 1971.
- (4) Nothing in this section shall empower the Corporation to pump or discharge any water into the Floating Harbour without the consent of the City Council.
- (5) Nothing in this section shall relieve the Corporation from the requirements of the Water Resources Act 1991 with respect to abstraction of water.
- (6) Sections 85, 86 and 87 of the Water Resources Act 1991 shall apply to, or to the consequences of, a discharge under the powers of this section into any controlled waters within the meaning given by section 104 of that Act as if this section were excluded from the reference to any local statutory provision mentioned in section 88 (1) (f) of that Act.



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- (7) In this section references to the taking or discharge of water include taking or discharging water by means of pumping.

## **19 Tidal works not to be executed without approval of Secretary of State**

- (1) A tidal work shall not be constructed, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.
- (2) If a tidal work is constructed, altered, replaced or relaid in contravention of this section or of any condition or restriction imposed under this section—
- (a) the Secretary of State may by notice in writing require the Corporation at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Corporation, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Corporation.

## **20 Provision against danger to navigation**

- (1) In case of injury to, or destruction or decay of, a tidal work, or any part thereof, the Corporation shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.
- (2) If the Corporation fails to notify Trinity House as required by this section or to comply in any respect with a direction given under this section, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **21 Abatement of works abandoned or decayed**

- (1) Where a tidal work is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Corporation at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.
- (2) Where a work, authorised by this Act and consisting partly of a tidal work and partly of works on or over land above the level of high water, is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Corporation, it has failed to comply with the requirements of the notice, the

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Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Corporation.

## **22 Survey of tidal works**

The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work constructed by the Corporation, or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Corporation.

## **23 Lights on tidal works**

- (1) The Corporation shall at or near a tidal work during the whole of the construction, alteration, replacement or re-laying thereof, exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as the Secretary of State may from time to time direct.
- (2) After the completion of a tidal work, the Corporation shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.
- (3) If the Corporation fails to comply in any respect with a direction given under this section it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **24 Status of works in impounded river**

For the purposes of any function of—

- (a) Trinity House; and
- (b) the Secretary of State; works in the impounded river other than—
  - (i) Work No. 1; and
  - (ii) any works downstream of the weir;shall not be treated as tidal works.

# **PART III**

## **LANDS**

## **25 Power to acquire lands**

- (1) The Corporation may acquire compulsorily and use such of the lands delineated on the deposited plans and described in the deposited book of reference as it may require for the purposes of—
  - (a) the works or obtaining access thereto;
  - (b) obtaining materials for the construction of the works, or depositing spoil or other material excavated during the construction thereof;or otherwise for the purposes of this Act or other purposes connected therewith.
- (2) No spoil or other material shall by virtue of the powers of this section be deposited in tidal waters below the level of high water except in such places and in accordance with

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such conditions and restrictions as may be approved or prescribed by the Secretary of State.

- (3) (a) The powers of the Corporation for the compulsory acquisition of lands under this section shall not be exercised after 31st December 1996.
- (b) The power to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if notice to treat has been served or deemed to have been served in respect of that land.

## **26 Power to acquire new rights only**

- (1) Subject to the provisions of this Act, the Corporation may for the purpose of constructing, maintaining, altering, renewing and using the works, or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works, acquire compulsorily such new rights as it requires over any of the land delineated on the deposited plans and described in the deposited book of reference instead of acquiring that land under section 25 (Power to acquire lands) of this Act.
- (2) The Act of 1965, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory acquisition of new rights under subsection (1) above as it applies to the compulsory acquisition of land so that, in appropriate contexts, references in the Act of 1965 to land are read as referring, or as including references, to the new rights or to land over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.
- (3) Without prejudice to the generality of subsection (2) above, in relation to the acquisition of new rights under subsection (1) above—
  - (a) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 3 to this Act; and
  - (b) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

## **27 Temporary possession of land**

- (1) This section applies to so much of the land delineated on the deposited plans and thereon numbered 1, 2, 3, 8, 13, 14 and 17 to 22 as lies within the line marked “Limit of land to be acquired or used” (hereinafter in this section referred to as “the said lands”).
- (2) The Corporation may, for the purpose of enabling it to construct the works, enter upon and take possession temporarily of the said lands after giving the owners, lessees and occupiers thereof not less than 28 days' previous notice in writing and may remove any structures thereon and may construct temporary works and structures thereon for such purpose.
- (3) The Corporation—
  - (a) shall not without the agreement of the owners, lessees and occupiers thereof remain in possession of any of the said lands under the powers of this section after a period of 10 years from the date of entry thereon;
  - (b) shall not be empowered to acquire compulsorily or be required to acquire the said lands (except such subsoil or new rights as it requires under the provisions of section 26 (Power to acquire new rights only) of this Act).

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- (4) Before relinquishing possession of any of the said lands the Corporation shall remove all works and structures erected by it on the surface thereof and shall, subject to any agreement to the contrary with the respective owners, lessees or occupiers thereof, reinstate the land so far as reasonably practicable to its condition immediately before entry thereon by the Corporation.
- (5) The Corporation shall compensate the owners and occupiers of the said lands for any loss or damage which may result to them by reason of the exercise of the powers of this section.
- (6) Nothing in this section shall relieve the Corporation from liability to compensate under section 10 (2) of the Act of 1965, as incorporated with or applied by this Act, or under any other enactment, in respect of loss or damage arising from the execution of any of the works, other than loss or damage for which compensation is payable under subsection (5) above.
- (7) Any dispute as to a person's entitlement to compensation under subsection (5) above or as to the amount thereof shall be determined by the tribunal.

## **28 Purchase of part of certain properties**

- (1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Act of 1965, as applied by this Act, the following provisions of this section shall apply to the land subject to the notice instead of section 8 (1) of that Act.
- (2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house, together with any park or garden belonging thereto, if the person on whom the notice is served, within 21 days after the day on which the notice is served on him, serves on the Corporation a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (in this section referred to as "the land subject to the counter-notice"), the question whether he shall be required to sell the part shall, unless the Corporation agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (3) If the said person does not serve such a counter-notice as aforesaid within 21 days after the day on which the notice to treat is served on him, or if, on such a reference to the tribunal, the tribunal determine that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, in the case of part of land consisting of a house, together with a park or garden belonging thereto, without such detriment and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.
- (4) If, on such a reference to the tribunal, the tribunal determine that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (5) If, on such a reference to the tribunal, the tribunal determine that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to

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the land already subject to the notice, whether or not the additional land is land which the Corporation is authorised to purchase compulsorily under this Act.

- (6) If the Corporation agrees to take the land subject to the counter-notice, or if the tribunal determine that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house; and
  - (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of the land is land which the Corporation is authorised to purchase compulsorily under this Act.

- (7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) above a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the Corporation may, within six weeks after the tribunal make their determination, withdraw the notice to treat and, if it does so, shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal:

Provided that the determination of the tribunal shall not be deemed to be made so long as—

- (a) the time for requiring the tribunal to state a case with respect thereto has not expired and any proceedings on the points raised by a case so stated have not been concluded; or
  - (b) any proceedings on appeal from any decision on the points raised by a case so stated have not been concluded.
- (8) (a) Where a person is required under this section to sell part only of a house, building or factory, or land consisting of a house, together with any park or garden belonging thereto, the Corporation shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.
- (b) Any dispute as to a person's entitlement to compensation under this section or as to the amount of compensation shall be determined by the tribunal.
- (9) This section shall apply with any necessary modifications to a notice to treat in respect of a right over land as it applies to a notice to treat in respect of part only of premises, and as if references to part of a house, building or factory or part of land consisting of a house, together with any park or garden belonging thereto were references to a right over land consisting of a house, building or factory or of a park or garden belonging to a house, and as if references to a sale of part were references to a grant of such right.

## **29 Disregard of recent improvements and interests**

In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land or new rights under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, or any building erected, works executed, or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was, at

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the time of the erecting, executing or making of the building, works, improvement or alteration, directly or indirectly concerned if the tribunal are satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration (as the case may be) was not reasonably necessary and was undertaken with a view to obtaining increased compensation.

### **30 Extinction of rights affecting land**

- (1) All private rights over or in any land which may be acquired by the Corporation for the purposes of this Act shall, as from the acquisition of the land, be extinguished.
- (2) All private rights over or in any land of which temporary possession is taken by the Corporation for the purposes of this Act shall, subject to any agreement which may be made between the Corporation and the person in whom the right in question is vested, be suspended for the duration of the Corporation's occupation of that land.
- (3) Any person who suffers loss by the extinguishment or suspension of any right under this section shall be entitled to be paid by the Corporation compensation to be determined in case of dispute by the tribunal.

### **31 Grant of new rights by persons under disability**

- (1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the Corporation any new right required for the purposes of this Act over or in the lands, not being a new right of water in which some person other than the grantor has an interest.
- (2) The provisions of the Act of 1965 with respect to lands and rentcharges, so far as they are applicable, shall extend and apply to any such grant and to any such new right as aforesaid.

### **32 Agreements with adjoining owners**

- (1) The Corporation may enter into and carry into effect agreements with any person being the owner of, or interested in, either any land adjoining any portion of the works, or any land which may be acquired by the Corporation under this Act, with respect to the sale by the Corporation to him (subject to such reservations, restrictions or other provisions as to the Corporation seem fit) of any land not required for the work.
- (2) The Corporation may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land required by the Corporation for the purposes of this Act or any new right so required.

### **33 Set-off for enhancement in value of retained land**

- (1) In this section "relevant land" means any land or any subsoil or undersurface of, or new rights over, any land acquired by the Corporation for the purposes of the works.
- (2) In assessing the compensation payable to any person on the acquisition by the Corporation from him of any relevant land, the tribunal shall—
  - (a) have regard to the extent to which the land or the remaining contiguous lands belonging to the same person may be benefited by any of the works; and

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- (b) set off against the compensation payable any increase in value of the remaining contiguous lands belonging to the same person which will accrue to him by reason of the construction of any of the works.

### **34 Correction of errors in deposited plans and book of reference**

- (1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Corporation after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.
- (2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.
- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, and with the proper officers of the Avon County Council and the City Council, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Corporation to take the land or an easement therein (as the case may be) and execute the works in accordance with the certificate.
- (4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

## **PART IV**

### **OPERATION OF WEIR, ETC.**

### **35 Operation of weir, etc**

- (1) In this section—
  - “control gates” means the flood gates, fish pass and other works comprised in Works Nos. 1, 2 and 3, or any of those works; and
  - “the scheme” means the scheme of operation of the control gates which is in effect pursuant to subsection (5) or (7) below.
- (2) As soon as may be after the passing of this Act, the Corporation shall after consultation with the rivers authority, the City Council and such other bodies as it considers to have an interest in the operation of the control gates, prepare proposals for a scheme of such operation.
- (3) The Corporation shall publish in a newspaper circulating in the city notice—
  - (a) that the proposals have been prepared;
  - (b) that copies of the proposals may be inspected, and at a reasonable price obtained, at an office named in the notice;
  - (c) of the general effect of the proposals; and
  - (d) that representations in respect of the proposals may be made to the Corporation in writing before a date specified in the notice, being not less than six weeks from the date of the notice.

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- (4) The Corporation, after considering all representations made in accordance with subsection (3) above, shall determine a scheme of operation of the control gates and shall publish in a newspaper circulating in the city notice—
  - (a) that the scheme has been made;
  - (b) that copies of the scheme may be inspected, and at a reasonable price obtained, at an office mentioned in the notice; and
  - (c) that objections to the scheme may be made in writing to the Secretary of State at an address specified in the notice before a date specified in the notice, being not less than six weeks from the date of the notice.
- (5) If no objections to the scheme are made under subsection (4) above, the scheme shall take effect in the form determined by the Corporation under that subsection.
- (6) If objections are made under subsection (4) above and are not withdrawn, the Secretary of State shall cause an inquiry to be held with respect thereto, unless he is of opinion that the objections are frivolous or too trivial to warrant the holding of an inquiry with respect to them.
- (7) After considering the objections (if any) made and not withdrawn and the report of any person who held an inquiry, the Secretary of State may confirm the scheme—
  - (a) in the form determined by the Corporation; or
  - (b) in that form subject to such modifications as he thinks fit;and the scheme shall take effect in that form.
- (8) The Corporation shall not bring Work No. 1 into operation before the scheme takes effect.
- (9)
  - (a) The Corporation shall carry out a periodic review of the scheme, such review to be undertaken at the request of the rivers authority not more than once every year after the scheme is brought into operation but in any event not less than once every five years.
  - (b) The results of the review and any proposals for the modification of the scheme shall be the subject of the procedures of this section as they apply to the scheme, unless the context otherwise requires.
- (10) The control gates shall be operated in accordance with the scheme and not otherwise, notwithstanding that the impounded river or any part thereof may thereby be closed to navigation and that the passage of vessels in the impounded river may thereby be obstructed, delayed or interfered with, and the Corporation shall not, as a result of such closure, be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of such obstruction, delay or interference.
- (11) Without prejudice to subsection (10) above, the Corporation shall give to the rivers authority as much notice as is reasonably practicable in the circumstances of its intention to operate the control gates for the purposes of the scheme.
- (12) The Corporation shall consult with the rivers authority when considering any representations or objections in respect of or to the scheme or any proposed modification thereof.
- (13) Nothing in this section shall have the effect of overriding the application of section 9 of the Salmon and Freshwater Fisheries Act 1975 to the fish pass comprised in Work No. 1.



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- (14) The functions of the Corporation under this section may, if so agreed by the Corporation and the City Council, be exercised by the City Council.

### **36 Misuse of equipment or machinery**

- (1) Any person who, without lawful authority or excuse, closes or opens or operates any of the equipment or machinery comprised in Works Nos. 1, 2 and 3, or in any other way intentionally or recklessly interferes with the operation thereof, shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (2) A person shall not be guilty of an offence under subsection (1) above as respects any act done in an emergency in order to avoid danger to any person.

## **PART V**

### THE IMPOUNDED RIVER

### **37 Commencement of Part V**

- (1) The provisions of this Part shall come into operation on such day or days, not earlier than the commencement of impoundment by means of the weir, as may be fixed for the purpose in accordance with subsections (2) and (3) below by resolution of the Corporation, and different days may be fixed for different provisions of this Part and for different parts of the impounded river.
- (2) The Corporation shall not without the consent of the port authority pass a resolution under this section as respects any part of the impounded river outwith the urban development area.
- (3) The Corporation shall publish in a newspaper circulating in the city notice—
- (a) of the passing of each resolution under this section and of the day fixed thereby; and
  - (b) of the general effect of the resolution and of the provisions of this Part to which it relates;
- and the day so fixed shall not be earlier than the expiration of 28 days from the date of publication of the notice.
- (4) A photostatic or other reproduction certified by an officer of the Corporation designated by it for the purposes of this subsection to be a true reproduction of a page, or part of a page, of any newspaper, being a page or part of a page bearing the date of its publication and containing the notice mentioned in subsection (3) above, shall be evidence of the publication of the notice and of the date of publication.

### **38 Jurisdiction of port authority**

The impounded river shall continue to form part of the port and nothing in this Act shall affect the operation of any other enactment relating to the port or to any function of the port authority.

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### **39 Extinguishment of navigation, etc., rights in impounded river**

- (1) All such rights of navigation or access over or along the impounded river as may exist immediately before this section comes into operation, whether public or private and howsoever arising, shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the works.
- (2) The Corporation shall pay compensation to any person who suffers damage by reason of the extinguishment effected by this section; and any question as to the amount of compensation so paid shall be determined by the tribunal.
- (3) In assessing any compensation payable under subsection (2) above the tribunal shall take account of—
  - (a) the extent to which the rights mentioned in subsection (1) above have been exercised; and
  - (b) the availability of the impounded river for navigation as provided in this Act.

### **40 Works in impounded river**

- (1) Subject to the provisions of this Act, the Corporation may from time to time in or on the impounded river erect, construct and maintain, whether temporarily or permanently, all such works and conveniences as may be requisite or expedient for the purposes of, or in connection with, the development, management or control of the impounded river or any land abutting on the impounded river.
- (2) The powers of subsection (1) above may be exercised notwithstanding interference by such works as erected, constructed or maintained with such rights of navigation as are referred to in section 39 (Extinguishment of navigation, etc., rights in impounded river) and are not extinguished by that section.
- (3) Nothing in subsection (1) above authorises the Corporation to carry out works on any land without the consent of the owner of that land.
- (4) Subject to subsections (5) and (6) below the Corporation may, for the purposes of, or in connection with, the development, management or control of the impounded river or any land abutting on the impounded river, execute or do on any such land by agreement with the owner and occupier of such land, any of the works or things referred to in subsection (1) above and any works requisite or expedient for the purpose of providing or facilitating access to or from the said lands or for preserving the amenities thereof.
- (5) The works authorised by this section shall not be development which is permitted development for any purpose of Part 17 of Schedule 2 to the Town and Country Planning General Development Order 1988.
- (6)
  - (a) The powers of this section shall not be exercised without the consent of the highway authority and the port authority which shall not be unreasonably withheld.
  - (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—
    - (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
    - (ii) preventing pollution or otherwise protecting the quality of water in the port.

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- (c) Any difference as to the withholding of consent under this subsection (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

#### **41 Licensing of works**

- (1)
  - (a) The Corporation may, upon such terms and conditions as it thinks fit and upon payment of such reasonable fee as may from time to time be prescribed by the Corporation, grant to any person a licence (in this Part referred to as a “works licence”) to construct, alter, renew, extend or maintain any such works as are described in section 40 (Works in impounded river) of this Act or any other works in or on the impounded river or involving the cutting of any of the banks of the impounded river.
  - (b) The powers of subsection (1) (a) above may be exercised notwithstanding interference by such works as constructed, altered, renewed, extended or maintained with such rights of navigation as are referred to in section 39 (Extinguishment of navigation, etc., rights in impounded river) and are not extinguished by that section.
- (2) Application for a works licence shall be made in writing to the Corporation and shall be accompanied by plans, sections and particulars of the works to which the application relates, and in granting any such licence the Corporation may require modifications in the plans, sections and particulars so submitted.
- (3) If within three months from the date of the making of an application under subsection (2) above the Corporation does not grant a works licence in accordance with the application, it shall be deemed to have refused the application.
- (4) Where, on an application for a works licence, the Corporation refuses to grant the licence, or grants it upon terms or conditions, or requires any modifications in the plans, sections and particulars, the notice in which the Corporation’s decision is conveyed to the applicant shall state clearly and precisely the reasons for the refusal or, as the case may be, for the terms or conditions imposed or the modifications required.
- (5) Any applicant for a works licence who is aggrieved by—
  - (a) the refusal of the Corporation to grant the licence;
  - (b) any terms or conditions upon which the licence is granted;
  - (c) any modifications required by the Corporation in the plans, sections and particulars submitted by the applicant;may, within 28 days after whichever is the later of the dates on which—
  - (i) the local planning authority gives him notice of a decision on any necessary application for planning permission in respect of the proposed works; or
  - (ii) the Corporation gives him notice of the decision;appeal to the Secretary of State, whose decision shall be binding upon the parties.
- (6) A person who appeals to the Secretary of State under this section shall give to the Corporation and the port authority notice of his appeal accompanied by a copy of his statement of appeal and the Corporation and the port authority shall within 28 days from the giving of such notice be entitled to give in writing to the Secretary of State its observations on the appeal.
- (7) On an appeal under this section the Secretary of State may—
  - (a) dismiss the appeal; or

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- (b) require the Corporation either—
  - (i) to grant the licence upon such terms and conditions as the Secretary of State may determine; or
  - (ii) to approve the plans, sections and particulars without modifications or subject to such modifications as the Secretary of State may determine; not being terms, conditions or modifications more onerous than those imposed by the Corporation; and the Corporation shall give effect to any requirement made by the Secretary of State under this subsection.
- (8) Nothing in any licence under this section shall entitle a person to carry out works on any land in which he has no appropriate interest without the consent of any person having such an interest.
- (9) (a) The Corporation shall not grant a works licence, except in accordance with a requirement of the Secretary of State under subsection (7) above, without the consent of the port authority which shall not be unreasonably withheld.
- (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—
  - (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
  - (ii) preventing pollution or otherwise protecting the quality of water in the port.

#### **42 Restriction on construction of works**

- (1) No person other than the Corporation shall construct, alter, renew or extend any works in or on the impounded river or involving the cutting of any of the banks of the impounded river (other than moorings laid down for vessels) unless he is licensed so to do by a works licence and except upon the terms and conditions (if any) upon which the licence is granted and in accordance with the plans, sections and particulars prescribed by the licence; but this subsection shall not apply to—
  - (a) the construction, alteration, renewal or extension of any works specifically authorised by any enactment or of any works executed by a highway authority under any enactment;
  - (b) the renewal of any work in existence at the date of the coming into operation of this Part.
- (2) Any person who knowingly contravenes this section or who knowingly contravenes or fails to comply with any term or condition upon which a works licence is granted by the Corporation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) The Corporation may by notice require a person who contravenes this section to remove or abate within a reasonable time specified in the notice any works to which the contravention relates and to restore the site thereof to its former condition and, if the person to whom the notice is given fails to comply with the notice, the Corporation may carry out the work required by the notice and recover the cost of so doing from that person.
- (4) A works licence shall not be required under this section for the construction, alteration, renewal or extension of any work by either the rivers authority or the water company in the exercise of any of their functions.

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### **43 Powers as to moorings, etc**

- (1) Subject to subsection (10) below, the Corporation may provide, lay down, maintain and use moorings in the impounded river or on the banks adjoining the impounded river, on land owned or leased by the Corporation or in which it holds an appropriate interest or on any other land with the consent in writing of the owner and lessee thereof.
- (2) The Corporation may recover in respect of any vessel using any of the moorings provided under this section or moored to land owned or leased by the Corporation in or adjoining the impounded river such reasonable charges as it may from time to time prescribe.
- (3) The Corporation may compound with any person with respect to the payment of the charges prescribed under this section.
- (4) Subject to subsection (9) below the Corporation may, having regard to the requirements of safe and unobstructed navigation, grant licences (which may be given on such terms or conditions or subject to compliance with such requirements as the Corporation thinks fit) to any person to lay down, maintain and use existing and future moorings in the impounded river or on the banks thereof; but
  - (a) nothing in any such licence shall entitle a person to place, lay down, maintain or use any mooring on land not owned or leased by him or by the Corporation or in which he has no appropriate interest;
  - (b) the Corporation shall not unreasonably refuse to grant a licence or grant it on unreasonable terms or conditions or subject to unreasonable requirements—
    - (i) to an owner or lessee of any land not leased by the Corporation with respect to a mooring on that land; or
    - (ii) with respect to a mooring on the banks of the impounded river which is positioned above the mean normal level of impounded water in the impounded river and exists at the date of the coming into operation of this Part;and any question whether the grant of a licence has been unreasonably refused or whether the terms or conditions of the licence or the requirements subject to which it is granted are unreasonable shall be referred to and determined by the Secretary of State.
- (5) Any licence granted under subsection (4) above shall be valid only for such period not exceeding three years commencing with its date as may be specified in the licence.
- (6) The Corporation may charge a reasonable fee for granting a licence under subsection (4) above.
- (7) Any person who—
  - (a) without reasonable excuse causes a vessel to be moored except at a mooring provided or licensed by the Corporation under this section; or
  - (b) lays down, maintains, or, without reasonable excuse, uses any mooring not so provided or licensed;shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (8) If any person lays down or maintains a mooring contrary to subsection (7) (b) above the Corporation may remove the mooring in question and recover from that person the expenses incurred in doing so.

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- (9) (a) The powers of the Corporation under this section shall not be exercised without the consent of the port authority, which shall not be unreasonably withheld.
- (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—
- (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
  - (ii) preventing pollution or otherwise protecting the quality of water in the port.
- (10) The powers of the Corporation under this section shall not be exercised without the consent of the rivers authority, whose consent shall not be unreasonably withheld, and any question whether such consent is unreasonably withheld (other than a difference as to construction or meaning) shall be referred to and settled by arbitration.

#### **44 Navigation, etc., in vicinity of weir**

- (1) Any person who, without reasonable excuse navigates or moors a vessel within the prescribed area shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) In this section “the prescribed area” means the area of water between the downstream limit of the impounded river and a line drawn across the impounded river 70 metres upstream of the weir, or such part of that area as may be prescribed for the purposes of this section by the Corporation.
- (3) The Corporation shall give notice of its prescription of such part of the area as is referred to in subsection (2) above by causing a notice stating the extent of the area so prescribed to be displayed in a prominent position in the vicinity thereof.

#### **45 Restriction on size of vessels permitted to navigate**

- (1) Any person who without reasonable excuse navigates or attempts to navigate any vessel which exceeds the prescribed dimensions—
- (a) within the limits of deviation for Work No. 2;
  - (b) within so much of the limits of deviation for Work No. 3 as lies within the impounded river; or
  - (c) in that part of the impounded river lying between New Brislington Bridge and a line drawn across the impounded river 200 metres downstream of that bridge;
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) In this section “the prescribed dimensions” means a length of 25 metres, a width of 5 metres, an overall height of 2.75 metres measured from water level and a draught of 1.4 metres, or such greater dimensions as the Corporation may from time to time by resolution prescribe; and the Corporation may prescribe different dimensions for different parts of the impounded river.
- (3) The Corporation shall give notice of its prescription of such greater dimensions as are referred to in subsection (2) above by causing a notice stating the dimensions so

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prescribed to be displayed in a prominent position in the vicinity of that part of the river to which they relate.

## PART VI

### PROTECTIVE PROVISIONS

#### 46 Notice to police, etc

before breaking up or otherwise interfering with any road in connection with the construction of the works, the corporation shall (except in a case of emergency) give not less than 14 days' notice to the chief officer of police and to the fire authority of its intention so to do.

#### 47 Crown rights

- (1) Subject to section 24 (Status of works in impounded river) of this Act, nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—
- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
  - (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that department.
- (2) Consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

#### 48 Saving for Trinity House

Subject to section 24 (Status of works in impounded river) of this Act, nothing in this Act shall prejudice or derogate from the powers, rights and privileges of Trinity House.

#### 49 For protection of electricity, gas and water undertakers

For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Corporation and the undertakers concerned, apply:—

- (1) In this section—
- “adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;
  - “apparatus” means—

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- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by such undertakers; or
- (b) in the case of gas or water undertakers, any mains, pipes or other apparatus belonging to or maintained by such undertakers;

and includes any building, structure or works for the lodging therein of apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“the undertakers” means any person authorised to carry on an undertaking for the supply of electricity, gas or water within the area within which the Corporation is by this Act authorised to purchase land or execute works and, in relation to any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained:

- (2) Notwithstanding the temporary stopping up or diversion of any road, bridleway or footpath under the powers of section 14 (Footpaths) and section 15 (Temporary stoppage of roads, bridleways and footpaths) of this Act the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such road, bridleway or footpath as may be reasonably necessary or desirable to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that road, bridleway or footpath:
- (3) Notwithstanding anything in this Act or shown on the deposited plans the Corporation shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
- (4) If the Corporation, in the exercise of the powers of this Act, acquires any interest in any land in which any apparatus is placed that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers:
- (5) If the Corporation, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Act, requires the removal of any apparatus placed in that land and gives to the undertakers written notice of such requirement, together with a plan and section of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, or if, in consequence of the exercise of any of the powers of this Act, the undertakers reasonably require to remove any apparatus, the Corporation shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Corporation and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Corporation and the Corporation is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Corporation, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:



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- (6) (a) Any alternative apparatus to be constructed in land of the Corporation under this section shall be constructed to any standard specification which the appropriate undertakers may have for the relevant apparatus, in the location and at depths and gradients applying in these circumstances or in such manner and in such line or situation as may be agreed between the undertakers and the Corporation or in default of agreement settled by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Corporation to be removed under the provisions of this section:

- (7) Notwithstanding anything in paragraph (6) above, if the Corporation gives notice in writing to the undertakers that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus or the removal of the apparatus required to be removed as will be carried out in any land of the Corporation, such work, in lieu of being executed by the undertakers, shall be executed by the Corporation with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Corporation to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around any apparatus extending (where the apparatus is laid in a trench) to 300 millimetres or more above the apparatus:

- (8) Where, in accordance with the provisions of this section, the Corporation affords to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Corporation of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Corporation and the undertakers or in default of agreement settled by arbitration:

Provided that—

- (a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along any works of the Corporation, the arbitrator shall—
- (i) give effect to all reasonable requirements of the Corporation for ensuring the safety and efficient operation of the works and for securing any subsequent alteration, which may be required to prevent interference with any proposed works of the Corporation; and
- (ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the works for which the alternative apparatus is to be substituted;
- (b) if the facilities and rights to be afforded by the Corporation in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Corporation to the undertakers in

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respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:

- (9) (a) Not less than 56 days before commencing to execute any such works as are referred to in paragraph (5) above and are near to or will or may affect any apparatus the removal of which has not been required by the Corporation under the said paragraph (5) the Corporation shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Such works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the execution of such works:

Provided that—

- (i) if the undertakers within 28 days after the submission to them of any such plan, section and description, in consequence of the works proposed by the Corporation, reasonably require the removal of any apparatus and give written notice to the Corporation of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Corporation under the said paragraph (5);
- (ii) nothing in this sub-paragraph shall preclude the Corporation from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any such works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and description;
- (c) The Corporation shall not be required to comply with sub-paragraph (a) above in a case of emergency but in such a case it shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances:
- (10) Where, in consequence of this Act, any part of any street, road, bridleway or footpath in which any apparatus is situate ceases to be part of a street, road, bridleway or footpath, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall prejudice or affect any right of the Corporation or of the undertakers to require removal of such apparatus under this section or the power of the Corporation to execute works in accordance with paragraph (9) above:
- (11) The Corporation shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (5) above, less the value of any apparatus removed under the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—

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- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason or in consequence of the execution, maintenance, user or failure of any such works or otherwise by reason or in consequence of the exercise by the Corporation of the powers of this Act:

- (12) Where, by reason or in consequence of the stopping up of any street, road, bridleway or footpath under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such street, road or footpath or elsewhere is rendered derelict or unnecessary, the Corporation shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Corporation) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason or in consequence of such apparatus being so rendered derelict or unnecessary:

Provided that the Corporation shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Corporation been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

- (13) Any difference arising between the Corporation and the under-takers under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration:
- (14) Nothing in this section shall be deemed to prejudice or affect the provisions of any enactment or agreement regulating the relations between the Corporation and the undertakers in respect of any apparatus laid or erected in land belonging to the Corporation at the date of the passing of this Act.

## **50 For protection of sewers of Wessex Water Services Limited**

For the protection of the sewers of the water company the following provisions shall, unless otherwise agreed in writing between the Corporation and the water company, apply:—

- (1) In this section—

“construction” includes execution, placing and altering and, in relation to temporary works, includes removal, and “constructed” shall be construed accordingly;

“new, altered or substituted works” includes any works required for the protection of any sewer;

“sewer” includes any sewer, drain or works vested in the water company under the Water Industry Act 1991, any main used for the conveyance of sewage sludge or sewage effluent and any pipe or subway vested in or maintained by the water company; and

“specified work” means so much of the works and of any work (whether temporary or permanent) forming part of, or constructed in connection with, the works, or any of them, as—

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- (a) will or may be situated over or within 10 metres measured in any direction of any sewer; or
  - (b) wherever situated, imposes any physical load directly on any sewer, pipe or drain; or
  - (c) wherever situated, adversely affects the operation of any sewer, pipe or drain:
- (2) The Corporation shall not commence the construction of any specified work unless it has given to the water company not less than 56 days' notice in writing of its intention to commence the same by leaving such notice at the principal office of the water company with plans as described in paragraph (7) below (in this section referred to as “the said plans”) and until the water company have signified their approval of the said plans:

Provided that such approval shall not be unreasonably withheld and, if within 56 days after the submission of the said plans the water company have not approved or disapproved them, they shall be deemed to have approved the said plans:
- (3) The Corporation shall comply with and conform to all reasonable orders, directions and regulations of the water company in the construction of any specified work and shall provide new, altered or substituted works which shall be constructed to the water company’s standard specification for the relevant apparatus, and in the location and at depths and gradients applying in these circumstances, in such manner as the water company reasonably require for the proper protection of, and for preventing injury or impediment to, a sewer of the water company by reason of any specified work and shall save harmless the water company against all expenses to be occasioned thereby:
- (4) All such new, altered or substituted works shall, where so required by the water company, be constructed by or under the direction, superintendence and control of an officer of the water company duly appointed for the purpose at the cost, charge and expense in all respects of the Corporation and all reasonable costs, charges and expenses to which the water company may be put by reason of such works, whether in the execution thereof, or in the preparation or examination of plans or designs or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the water company by the Corporation on demand:
- (5) When any such new, altered or substituted works or any work of defence connected therewith shall be completed by or at the cost, charge and expense of the Corporation under the provisions of this section, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the water company as any sewers or works now or hereafter may be:
- (6) Nothing in this Act shall extend to prejudice, diminish, alter or take away any of the rights, powers or authorities vested or to be vested in the water company in relation to sewers but all such rights, powers and authorities shall be as valid and effectual as if this Act had not been passed:
- (7) The plans to be submitted to the water company for the purposes of this section shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall accurately describe the position of all sewers of the water company within the limits of deviation (for which purpose the water company shall allow the Corporation access to plans in their possession and to any of their sewers in order to enable the Corporation to obtain reliable information) and shall comprise

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detailed drawings of every alteration which the Corporation may propose to make in any such sewers:

- (8) The water company may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewerage system of the water company against interference or risk of damage and to provide and secure a proper and convenient means of access to the sewers of the water company:
- (9) The Corporation shall be liable to make good, or, if the water company so decide, to bear any expense reasonably incurred by the water company in making good, all injury or damage caused by or resulting from the construction of any specified work to any sewers, drains or works vested in the water company, and the water company shall have power to recover any expense so incurred by them from the Corporation:
- (10) If, in the construction of any specified work, or any new, altered or substituted works, or any work of defence connected therewith provided in accordance with this section, the Corporation damages, or, without the consent of the water company, alters or in any way interferes with any existing sewer of the water company the Corporation shall—
  - (a) pay to the water company any additional expense to which they may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the said construction; and
  - (b) give to the water company full, free and uninterrupted access at all times to any such new, altered or substituted sewer (but under the supervision and control of the Corporation which shall be provided as soon as possible) and every reasonable facility for the inspection, maintenance, alteration and repair thereof:
- (11) It shall be lawful for an officer of the water company duly appointed for the purpose at any reasonable time and, if required by the Corporation, under its supervision to enter upon and inspect any specified work or any other works constructed under the powers of this section:
- (12) The approval by the water company of any plans or the superintendence by them of any work under the provisions of this section shall not exonerate the Corporation from any liability or affect any claim for damages under this section or otherwise:
- (13) As soon as reasonably practicable after the completion of the construction of a specified work the Corporation shall deliver to the water company a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this section:
- (14) Any difference arising between the Corporation and the water company under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

## **51 For protection of National Rivers Authority**

For the protection of the rivers authority, the following provisions shall, unless otherwise agreed in writing between the Corporation and the rivers authority, apply:—

- (1) In this section—

“construction” includes execution, placing and altering, and, in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

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“drainage work” means any watercourse as defined in the Land Drainage Act 1991, and includes any land used for providing flood storage capacity for any such watercourse and any structure or appliance constructed or used for defence against water;

“plans” includes sections, drawings, specifications, method statements and other such particulars including in relation to the weir the operational criteria;

“the prescribed minimum flow” means a flow of not less than that for which the fish pass forming part of the weir is designed or adapted;

“the protected fishery” means the river and fish in, or migratory fish proceeding to or from, the impounded river and the spawn or food of such fish;

“specified work or operation” means so much of any work or operation authorised by Part II of this Act as is likely to—

- (a) affect any drainage work or the volumetric flow rate of water in, or flowing to or from, any drainage work;
- (b) affect the flow, purity or water quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse; or
- (d) affect the conservation, distribution or use of water resources; and

“specified work” and “specified operation” shall be construed accordingly:

- (2) The Corporation shall not under the powers of this Act acquire any apparatus belonging to or maintained by the rivers authority otherwise than by agreement:
- (3) In the event that the Corporation commences to construct Work No. 1 or any other specified work or specified operation, the rivers authority may require the Corporation—
  - (a) to construct and complete the whole of that work or operation; and
  - (b) before any impoundment of the river by means of the weir, to construct and complete any other work or operation required by the rivers authority in connection with its approval of Work No. 1 under paragraph (4) below.
- (4) (a) The Corporation shall submit to the rivers authority for its approval plans of any specified work or operation and such further particulars available to it as the rivers authority may reasonably require;
  - (b) (i) Any such specified work or operation shall not be constructed except in accordance with plans approved in writing by the rivers authority, or settled pursuant to paragraph (17) (a) below, and in accordance with any reasonable requirements made by the rivers authority for the protection of any drainage work or of the protected fishery or water resources and for the prevention of flooding or pollution;
  - (ii) Requirements under this sub-paragraph may include, in relation to the weir, requirements as to levels, an alignment within the limits of deviation for the weir and as to the fish pass facilities and sluices which form part of the weir;
- (c) Without prejudice to the generality of the foregoing the requirements which the rivers authority may make under sub-paragraph (b) above include conditions requiring the Corporation at its own expense—
  - (i) to provide or maintain means of access for the rivers authority;
  - (ii) to undertake landscaping; and
  - (iii) to construct such protective works whether temporary or permanent during the construction of the specified work or operation (including the provision of flood embankments or walls and other new works and

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- the strengthening, repair or renewal of existing banks, embankments or walls) as are reasonably necessary to safeguard the weir or any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired or the risk of flooding is not otherwise increased by reason of any specified work;
- (d) Protective works required by the rivers authority under sub-paragraphs (b) and (c) above may include the construction of such works on any land whether or not the Corporation has a sufficient interest therein and may be in addition to such works as are authorised by section 7 (Further works and powers) of this Act;
- (e) Approval of plans submitted under this paragraph shall not be unreasonably withheld and if within a period of two months after the submission of any plans under sub-paragraph (a) above the rivers authority does not inform the Corporation in writing that it disapproves of those plans, stating the grounds of its disapproval, it shall be treated for the purposes of this section as having approved them:
- (5) (a) Any specified work or operation, and all protective works required by the rivers authority under paragraph (4) above, shall be constructed to the reasonable satisfaction of the rivers authority and the rivers authority shall be entitled by its officer to watch and inspect the construction of such works and operations;
- (b) If any of the works is constructed other than in accordance with the requirements of this section, the rivers authority may by notice in writing require the Corporation at the Corporation's own expense to comply with the requirements of this section or to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition;
- (c) Subject to sub-paragraph (d) below, if, on the expiration of 30 days from the date when a notice under sub-paragraph (b) above is served upon the Corporation, it has failed to comply with the requirements of the notice, the rivers authority may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Corporation;
- (d) In the event of any dispute as to whether sub-paragraph (b) above is properly applicable to any work in respect of which notice has been served under that sub-paragraph, the rivers authority shall not except in emergency exercise the powers of sub-paragraph (c) above until the dispute has been finally determined:
- (6) (a) Any work constructed under this Act which provides a defence against flooding shall be maintained by and at the expense of the Corporation to the reasonable satisfaction of the rivers authority;
- (b) If any such work is not maintained to the reasonable satisfaction of the rivers authority it may by notice in writing require the Corporation at the Corporation's own expense to carry out such works of maintenance, repair or replacement as may be specified in the notice and if, on the expiration of 30 days from the date when the notice is served upon the Corporation, it has failed to comply with the requirements of the notice, the provisions of sub-paragraph (5) (c) above shall apply:
- (7) The Corporation shall not commence impounding of the river by means of the weir until—

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- (a) such protective works as the rivers authority may require under paragraph (4) above have been constructed; and
  - (b) there have been secured to the reasonable satisfaction of the rivers authority the removal, relocation, improvement or effective operation of such outfalls as the rivers authority may reasonably require having regard to the likely effect of the construction or operation of the weir upon the operation of such outfalls and the environmental effect of their operation:
- (8) (a) Without prejudice to the other provisions of this section, the Corporation shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during the construction of the weir and shall not exercise the powers of section 11 (Dredging and other operations in river) of this Act in such a manner as is likely to affect prejudicially the operation of any fish pass facilities or other work provided to help secure or monitor the passage of fish;
- (b) The Corporation shall be responsible for and make good to the rivers authority all costs, charges, expenses and losses which may be occasioned to, suffered by, or reasonably incurred by the rivers authority in taking action—
- (i) after notice in writing to the Corporation to protect the protected fishery against anticipated damage; or
  - (ii) to remedy any damage to that fishery;
- being damage anticipated or suffered by reason or in consequence of the execution of the works or operations authorised by this Act, of the failure or want of repair of the works, or in consequence of any act or omission of the Corporation or its contractors, agents, workmen or servants in connection with those works or operations:
- (9) (a) The Corporation shall when requested so to do in writing by the rivers authority remove any accumulation in the river caused or created in consequence of the construction of any specified work or operation where such removal is reasonably required by the rivers authority so as to secure that the efficiency of either—
- (i) the fish pass comprised in the weir; or
  - (ii) the impounded river as a drainage work;
- is not materially impaired;
- (b) If by reason of the construction of any specified work or operation the efficiency of any drainage work is otherwise impaired or that work is otherwise damaged, such damage shall be made good by the Corporation to the reasonable satisfaction of the rivers authority;
- (c) If the Corporation fails to remove any accumulation or make good any damage in accordance with the requirements of this paragraph, the rivers authority may do so and recover from the Corporation the expense reasonably incurred by it in so doing:
- (10) (a) Plans of any specified work shall not be submitted by the Corporation to the Minister for his approval pursuant to section 9 of the Salmon and Freshwater Fisheries Act 1975 or to the Secretary of State under section 19 (Tidal works not to be executed without approval of Secretary of State) of this Act until plans of that work have been approved by the rivers authority or submitted for settlement under paragraph (17) (a) below, and if, on the submission of plans to the Minister or to the Secretary of State, either of them requires any alteration of the plans so approved or settled under this section, or of



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- any such requirement relating thereto, the Corporation shall, not less than 28 days before commencing the work, inform the rivers authority of any such alteration;
- (b) Subject to compliance with sub-paragraph (a) above, if there is any inconsistency between any plans approved or deemed to be approved by the rivers authority or settled under paragraph (4) above or any requirement relating thereto, and the plans approved by the Minister or by the Secretary of State (as the case may be) or any conditions or restrictions imposed by the Secretary of State under the said section 19 the specified work or operation shall be constructed in accordance with the plans approved by the Minister or by the Secretary of State (as the case may be) and subject to the conditions or restrictions imposed by the Secretary of State;
  - (c) When submitting any plans to the Secretary of State under the said section 19, the Corporation shall send a copy of the plans to the rivers authority and the Corporation shall, on receipt of approval of plans or of any conditions or restrictions imposed under that section, send a copy to the rivers authority:
- (11) The Corporation shall at its own expense and in consultation with the rivers authority—
- (a) formulate and give effect to a programme for monitoring siltation or scouring, which may impair the efficiency of any drainage work, arising in consequence of the construction or operation of the weir, or any extension, enlargement, alteration or replacement of the weir; and
  - (b) formulate a programme for monitoring the effect on the protected fishery of the construction and operation of the weir or of any extension, enlargement, alteration or replacement of the weir:
- (12) The Corporation shall carry out such technical surveys and modelling as are reasonably required by the rivers authority by reason of the intended construction and operation of the weir for the purpose of securing the maintenance of water quality standards:
- (13) The Corporation shall indemnify the rivers authority in respect of the following costs, charges and expenses which the rivers authority reasonably imposes, incurs or has to pay or sustain:—
- (a) any charge made for a consent under any enactment, being a charge of the amount usually made by the rivers authority for such consents;
  - (b) the actual cost to the rivers authority of supervision by it of the construction of any specified work or the carrying out of any specified operation where such supervision is reasonably required for the purposes of any function of the rivers authority in so far as such costs are not recovered under sub-paragraph (a) above;
- or such lump sum in respect of such costs, charges and expenses as may be agreed between the Corporation and the rivers authority:
- (14) (a) Without prejudice to the other provisions of this section, the Corporation shall indemnify the rivers authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against or recovered from or incurred by, the rivers authority by reason or in consequence of—
- (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
  - (ii) any damage to the protected fishery; or

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- (iii) any raising of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or
- (iv) any flooding of land which prior to the construction of the works was not subject to flooding or any increased flooding of any land which prior to the construction of the works was subject to flooding; or
- (v) deterioration of water quality in the river or other surface waters or in groundwater affected by the raising of the water table in any land adjoining the river;

which may be caused by or result from the construction of any specified work or operation, or the failure or want of repair thereof, or any act or omission of the Corporation or its contractors, agents, workmen or servants whilst engaged upon the work or operation;

- (b) The rivers authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:
- (15) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the rivers authority or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the Corporation from any liability under the provisions of this section:

Provided that this sub-paragraph shall not apply to the extent that such liability arises from a failure by the rivers authority, or by the Minister or the Secretary of State (whether or not acting as an arbitrator), properly to perform their functions:

- (16) Except as otherwise provided by this Act, nothing in this Act shall prejudice or affect in their application to the rivers authority the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991, the Water Resources Act 1991, the Salmon and Freshwater Fisheries Act 1975 or any other enactment, byelaw or regulation relating to the rivers authority:
- (17) (a) Any difference arising between the Corporation and the rivers authority under paragraph (4) or (8) above shall be settled by the Minister and the Secretary of State acting jointly on a reference to them by the Corporation or the rivers authority after notice by one to the other;
  - (b) Subject to sub-paragraph (a) above any difference arising between the rivers authority and the Corporation under this section (other than a difference as to the construction thereof) shall be settled by arbitration.

## **52 For further protection of National Rivers Authority**

For the further protection of the rivers authority the following provisions shall, unless otherwise agreed in writing between the Corporation and the rivers authority, apply:—

- (1) Nothing in sections 40 (Works in impounded river), 41 (Licensing of works) or 43 (Powers as to moorings, etc.) of this Act shall relieve any person of the obligation to obtain consent under section 109 of the Water Resources Act 1991 (which requires the consent of the rivers authority to the erection of any structure in, over or under a watercourse which is designated as main river) or any other licence or consent required under any enactment:

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- (2) Nothing in this Act shall exempt any person from any land drainage byelaws of the rivers authority:
- (3) (a) On receipt of application for a works licence under the said section 41 the Corporation shall serve on the rivers authority a copy of the application and all plans, sections and particulars incidental thereto;
- (b) The Corporation shall consider such observations as the rivers authority may submit to the Corporation within six weeks after service on the rivers authority of the application and particulars as aforesaid, and shall not grant a works licence before the expiry of that period;
- (c) In granting any works licence in response to such an application the Corporation shall impose on the applicant such terms and conditions as give effect to such reasonable requirements to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for flood defence purposes is not impaired, as the rivers authority may, within the said period make in any observations to the Corporation:
- (4) If by reason of the carrying out by the Corporation of works or operations in exercise of any of the powers of subsection (1) of section 43 (Powers as to moorings, etc.) of this Act, a watercourse or any of the banks of a watercourse is damaged or the efficiency of a watercourse for flood defence purposes is impaired, and the rivers authority takes such steps as are reasonable—
- (a) to make good the watercourse to restore it to its former standard of efficiency; or
- (b) where necessary, to construct some other work in substitution therefor;
- it may recover from the Corporation the reasonable cost of so doing (including a proper proportion of the overhead charges of the rivers authority) and any such cost of executing works needed for remedying any subsidence of the substituted work during such reasonable period as may be agreed between the Corporation and the rivers authority, or failing agreement, settled by arbitration:
- Provided that nothing in this paragraph shall apply to the erection of any structure or the carrying out of any work of alteration or repair of a structure in accordance with a consent of the rivers authority given under section 110 of the Water Resources Act 1991:
- (5) If the rivers authority has reasonable grounds for believing that a watercourse or any of the banks of a watercourse is likely to be damaged or the efficiency of a watercourse for flood defence purposes is likely to be impaired in any of the circumstances mentioned in the last foregoing paragraph, it may carry out such protective works as may be agreed between it and the Corporation or as, failing agreement, may be settled by arbitration, and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the rivers authority) from the Corporation:
- (6) Any difference arising between the rivers authority and the Corporation under this section (other than a difference as to the construction thereof) shall be settled by arbitration.

### **53 For protection of port authority**

For the protection of the port authority, the following provisions shall unless otherwise agreed in writing between the Corporation and the port authority, apply:—

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- (1) In this section, unless the context otherwise requires, “the downstream river” means that part of the river which is downstream of the weir:
- (2) If, between the commencement of the construction of the weir and 10 years after the completion thereof—
  - (a) any part of the downstream river becomes subject to silting which is wholly or partly caused as a result of the weir; or
  - (b) other alterations occur in the regime of the downstream river wholly or partly as a result of the weir;so as materially to affect the suitability of the river for safe navigation by vessels satisfying the long established size criteria for navigating the river and to necessitate dredging or other operations in order to facilitate navigation by such vessels in the downstream river or their access to and from the Floating Harbour, or to secure the efficiency of the river as a flood defence work; and
  - (c) the port authority give notice in accordance with paragraph (3) below; the provisions of this section shall have effect:
- (3) In the circumstances described in paragraph (2) above the port authority may during the construction or within the period of 10 years after the completion of the weir give notice that in consequence of those circumstances having arisen such silting should be removed or that dredging or other operations are required for the purpose of—
  - (a) maintaining a channel in the downstream river in the interests of persons using the downstream river; or
  - (b) for the prevention of flooding; or
  - (c) for the protection of any works or installations in the downstream river (whether or not owned by the port authority):
- (4) If notice is given under paragraph (3) above the Corporation shall pay to the port authority any additional costs reasonably incurred by the port authority in connection with dredging the river, or the disposal of silt or carrying out any other operations for the purposes set out in that paragraph, in so far as the necessity therefor is attributable to the weir:
- (5) In the event of any payment falling due under paragraph (4) above the period of 10 years shall be extended for a further 10 years from the date of discovery of the silting or other alterations referred to in that paragraph so that the Corporation shall be liable in each successive period of 10 years up to a maximum of 30 years after completion of the weir:
- (6) Against any sum payable by the Corporation under paragraph (4) or (5) above there shall be offset any diminution in the cost to the port authority of dredging or other operations which results from the construction of the weir to the extent that such diminution has not been offset against any other payment made by the Corporation under this section:
- (7) In the event of any payment falling due under paragraph (4) or (5) above the Corporation shall pay compensation to the port authority for any loss or damage arising from the circumstances which gave rise to the payment which is sustained by the port authority within a period of 30 years after the completion of the weir and is not so sustained as a result of any default on the part of the port authority:
- (8) The Corporation shall pay to the port authority any costs reasonably incurred by the port authority in order to ascertain whether any such events or alterations as are

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mentioned in paragraph 2(a) and (b) above have occurred, not being costs which the port authority would have incurred for other reasons:

- (9) The Corporation shall pay compensation to the port authority for any loss or damage which is sustained by the port authority by reason or in consequence of the failure or the want of repair of the weir:
- (10) The Corporation shall pay to the port authority the reasonable costs of such alterations to the marking and lighting of the navigational channel of the downstream river as may be reasonably necessary during, or as a direct consequence of, the construction of the weir:
- (11) Any difference arising between the Corporation and the port authority under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration:
- (12) The Secretary of State shall in any order made under section 61 (Transfer of functions) of this Act make provision preserving the benefit of, or which is not less favourable than, this section (other than paragraph (9)) for the protection of the port authority.

#### **54 For protection of highway authority**

For the protection of the highway authority the following provisions shall, unless otherwise agreed in writing between the Corporation and the highway authority have effect:—

- (1) In this section “highway” includes any intended highway (including a walkway to be created under section 35 of the Highways Act 1980) construction of which has been commenced but which has not yet been dedicated to public use:
- (2) Before commencing any part of the works the Corporation shall consult the highway authority as to—
  - (a) the programme for the construction of the works so as to secure, so far as may be reasonably practicable, that the duration of any disturbance occasioned by, or in connection with, such construction shall be reduced to a minimum; and
  - (b) any land to be occupied or used by the Corporation or its contractors as a temporary working site for the purposes of such construction, the period for which and the manner in which any such site is to be used and the steps to be taken by the Corporation in order to mitigate injury to the amenity, or interference with the convenience, of other highway users:
- (3) If the construction of any works affects any highway, the Corporation shall submit plans, sections and particulars relating thereto to the highway authority for its approval and notwithstanding anything shown on the deposited plans and the deposited sections the work to which such plans, sections and particulars relate shall not be constructed otherwise than in accordance with such plans, sections and particulars as have been approved by the highway authority as aforesaid provided that, if within 56 days after the submission to it of plans, sections and particulars in accordance with the provisions of this paragraph the highway authority does not signify its approval or disapproval thereof and the grounds for such disapproval, it shall be deemed to have approved thereof:
- (4) The Corporation shall consult the highway authority as to the routes proposed to be used by vehicles, machinery and plant, passing to or from any works under construction for the purposes of this Act and shall procure that all such vehicles,

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machinery and plant (whether belonging to the Corporation or to any contractor or other person) shall comply with such directions as the highway authority may give in respect of such routes and times or manner of their use:

- (5) (a) Before commencing to construct any part of any work which would involve interference with any highway the Corporation shall consult the highway authority as to—
- (i) the time when that part shall be commenced;
  - (ii) the extent of the surface of the highway which it may be reasonably necessary for the Corporation to occupy in the construction of that part;
  - (iii) the conditions under which that part shall be constructed so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public;
- and that part shall not be constructed and the surface of the highway shall not be occupied by the Corporation except at the time, to the extent and in accordance with such reasonable conditions as may be agreed between the Corporation and the highway authority;
- (b) Any such highway shall be reinstated by the Corporation in the manner approved by the highway authority and to its satisfaction:
- (6) Any part of the construction of any work which involves interference with the highway shall be carried out under the supervision (if given) and to the reasonable satisfaction of the highway authority:
- (7) No part of the works (whether in or under a highway or elsewhere) shall be constructed in any way which shall have a detrimental effect either temporarily or permanently on the drainage of the surface of any highway:
- (8) The Corporation shall at all reasonable times during the construction of any part of the works that affect a highway or land supporting a highway afford to the surveyor of the highway authority or his duly authorised representatives access to the works for the purposes of inspection:
- (9) It shall be the responsibility of the Corporation at all times during the construction of the works to procure that the works are fenced against the highway:
- (10) (a) Subject to sub-paragraph (b) below, where the Corporation has carried out any works in any highway maintainable at public expense, that highway shall remain vested in and maintained by the highway authority which shall continue to have all such rights in relation to the subsoil and undersurface thereof as may be necessary for the purpose of its functions;
- (b) The Corporation shall be liable to the highway authority for the maintenance or repair of any works it has carried out in or affecting a highway for a period of 12 months after completion of those works:
- (11) The Corporation shall compensate the highway authority for any loss or expenditure it reasonably incurs as a result of subsidence of, or damage to, any highway or any other property belonging to, under the control of, or repairable by the highway authority in so far as such may be caused by, or in consequence of, any default of the Corporation, its contractors, servants or agents and whether such subsidence or damage happened during the construction of the works or at any time thereafter:

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- (12) The Corporation shall keep the highway authority indemnified against all actions, costs, claims and demands whatsoever (save in so far as the same may arise from the default or negligence of the highway authority, its contractors, servants or agents) brought or made against the highway authority by any person in respect of loss or damage caused by or in consequence of the construction of any of the works and the fact that any act or thing may have been done in accordance with plans, sections and particulars approved by the highway authority or in accordance with any requirements of the highway authority or under its supervision shall not excuse the Corporation from liability under the provisions of this section:
- (13) The Corporation shall repay to the highway authority all reasonable costs, charges and expenses of the highway authority for the examination of the plans, sections and particulars submitted to the highway authority under this section, for supervising any works to highways and for the carrying out of all or any steps in connection with the making of any traffic regulation orders or the carrying out of any other act or thing which the highway authority reasonably deems necessary for the purposes of any traffic management measure in connection with any part of the construction of the works:
- (14) The Corporation shall not except with the highway authority's consent by itself or its contractor or agent deposit any soil, subsoil or other material on any highway and shall not permit any vehicle to obstruct any highway except in so far as such obstruction may be authorised by this Act:
- (15) The Corporation shall not without the consent of the highway authority place any hoarding on any part of the highway.

## **55 For protection of British Railways Board**

For the protection of the British Railways Board (in this section referred to as “the railways board”) the following provisions shall unless otherwise agreed in writing between the Corporation and the railways board apply:—

- (1) In this section—
  - “construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;
  - “the engineer” means an engineer to be appointed by the railways board;
  - “plans” includes sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction);
  - “railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works;
  - “specified works” means so much of the works and operations authorised by this Act (whether temporary or permanent) as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property and includes the construction, maintenance and renewal of such works:
- (2) The exercise of the powers of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of land, as applied by section 3 (Incorporation of general enactments) of, and incorporated with, this Act, shall not prevent the exercise by the railways board of such rights as the railways board may have of access (with

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or without vehicles, machinery and materials) for the railways board and their agents and employees over any such land to and from railway property:

- (3) The Corporation shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans, sections and particulars thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that if within 56 days after such plans, sections and particulars have been furnished to the railways board the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:

- (4) If within 56 days after such plans have been furnished to the railways board, the railways board give notice to the Corporation that the railways board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property then, if the Corporation desires such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Corporation in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Corporation, if the railways board so desire, with all reasonable dispatch and the Corporation shall not commence the construction of the specified works until the engineer has notified the Corporation that the protective works have been completed to his reasonable satisfaction:
- (6) The Corporation shall give to the railways board not less than 28 days' notice in writing of its intention to commence the construction of any of the specified works and, (except in emergency when the Corporation shall give such notice as may be reasonably practicable), also of its intention to carry out any works for the repair or maintenance of the specified works:
- (7) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
  - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
  - (c) in such manner as to cause as little damage to railway property as may be; and
  - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways board or the traffic thereon and the use by passengers of railway property; and, if any damage to railway property or any such interference or obstruction shall be caused or take place, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:



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- (8) The Corporation shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
  - (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
  - (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.
- (9) The railways board shall at all times afford reasonable facilities to the Corporation and its agents for access to any works carried out by the railways board under this section during their construction and shall supply the Corporation with such information as it may reasonably require with regard to such works or the method of construction thereof:
- (10) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of the specified works, such alterations and additions may be effected by the railways board after not less than 28 days' notice has been given to the Corporation and the Corporation shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:
- (11) The Corporation shall repay to the railways board all costs and charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the Corporation as provided by paragraph (4) of this section or in constructing any protective works under the provisions of paragraph (5) of this section including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
  - (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
  - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;
  - (e) in respect of the approval by the engineer of plans submitted by the Corporation and the supervision by him of the specified works:
- (12) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the Corporation informing it that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Corporation shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as

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not prejudicially to affect railway property and, if and whenever the Corporation fails to do so, the railways board may make and do in and upon the land of the railways board or of the Corporation all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Corporation:

- (13) The Corporation shall not exercise the powers of section 11 (Dredging and other operations in river) of this Act within a distance of 50 metres of any railway property otherwise than in accordance with the provisions of this section:
- (14) Any difference arising between the Corporation and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

## **56 For protection of flora and fauna**

The Corporation shall consult the Nature Conservancy Council for England as to measures which may be taken by the Corporation to develop and, so far as may be consistent with the purposes of this Act, to conserve flora and fauna within the impounded river.

## **PART VII**

### MISCELLANEOUS AND GENERAL

## **57 Application of Act to Feeder Canal and Floating Harbour**

- (1) (a) The provisions of this Act mentioned in subsection (2) below shall, at such time or times as may be fixed for the purpose in accordance with subsections (3) and (4) below by resolution of the Corporation, apply to the Feeder Canal and the Floating Harbour as they apply to the impounded river.
- (b) Different days may be fixed for different provisions and for different parts of the Feeder Canal and the Floating Harbour.
- (2) The provisions referred to in subsection (1) above are the following:—
  - section 24 (Status of works in impounded river);
  - Part V—  
The impounded river, except sections 37, 39, 44 and 45;
  - Part VI—  
;Protective provisions; and
  - section 58 (Management arrangements).
- (3) The Corporation shall not without the consent of the City Council pass a resolution under this section as respects any part of the Feeder Canal or the Floating Harbour outwith the urban development area.
- (4) The Corporation shall publish in a newspaper circulating in the city notice—
  - (a) of the passing of each resolution referred to in subsection (1) above and of the day fixed thereby; and
  - (b) of the general effect of the resolution;

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and the day so fixed shall not be earlier than the expiration of 28 days from the date of publication of the notice.

- (5) A photostatic or other reproduction certified by an officer of the Corporation designated by it for the purposes of this subsection to be a true reproduction of a page, or part of a page, of any newspaper, being a page or part of a page bearing the date of its publication and containing the notice mentioned in subsection (4) above, shall be evidence of the publication of the notice and of the date of publication.
- (6) Nothing in this section affects prejudicially any private rights enjoyed under or by virtue of the Bristol Dock Acts and Orders 1848 to 1986.
- (7) In this section “the Corporation” includes any successor of the Corporation by virtue of an order made under section 165 of the Local Government, Planning and Land Act 1980 (transfer of undertakings of urban development corporation) or section 61 (Transfer of functions) of this Act.

## **58 Management arrangements**

- (1) Subject to subsection (5) below, the Corporation may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of all or part of the works, lands, facilities, functions and activities comprising the undertaking of the Corporation, including the impounded river as authorised by or established under, or in connection with, this Act, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Corporation or by any other person.
- (2) Any agreement under subsection (1) above may provide (inter alia) for the exercise of the powers of the Corporation in respect of the said undertaking or any part or parts thereof.
- (3) The Corporation may at any time lease any part of the said undertaking on such terms and conditions as may be agreed.
- (4) The exercise of the powers of any enactment by any person in pursuance of any agreement under subsection (1) above or any lease under subsection (3) above shall be subject to the same restrictions, liabilities and obligations as would apply under this Act if those powers were exercised by the Corporation.
- (5)
  - (a) The Corporation shall not enter into any agreement under this section as regards Part IV of this Act without the consent of the rivers authority and as regards Part V of this Act without the consent of the City Council, in either case consent not to be unreasonably withheld.
  - (b) Any difference as to the withholding of such consent (other than a difference as to meaning or construction) shall be referred to and settled by arbitration.

## **59 Covenants, etc., binding successive owners**

Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (which relates to the enforceability by local authorities of covenants affecting land) shall apply to the Corporation as if the Corporation were a principal council and as though the reference therein to section 111 of the Local Government Act 1972 were a reference to section 136 of the Local Government, Planning and Land Act 1980 and to section 13

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(Agreements with owners of land and others for construction of works) and section 58 (Management arrangements) of this Act.

## **60 Corporation's undertaking**

The powers and duties conferred or imposed on the Corporation by or by virtue of this Act shall form a part of the undertaking of the Corporation for the purposes of sections 165 and 166 of the Local Government, Planning and Land Act 1980 (which relate to the transfer of undertakings and dissolution of urban development corporations).

## **61 Transfer of functions**

- (1) Notwithstanding any other provision of this Act or any provision of the Local Government, Planning and Land Act 1980, the Secretary of State, on the application of the Corporation, may by order made by statutory instrument at any time transfer to any person all or any part of the undertaking authorised by this Act or all or any of the functions conferred on the Corporation by this Act and thereafter, in relation to the undertaking or part thereof, or to the functions so transferred, that person shall have and may exercise all or any of the powers conferred upon the Corporation by this Act or which the Corporation has or might exercise under this Act and shall be subject to all the liabilities and obligations to which the Corporation is subject under this Act and shall perform all the duties of the Corporation under this Act.
- (2) The Corporation shall not apply for an order under this section—
  - (a) transferring any of its functions under section 53 (For protection of port authority) of this Act to the City Council;
  - (b) transferring any of its functions under this Act to the City Council or the rivers authority without the consent of the City Council or, as the case may be, the rivers authority as transferee;
  - (c) transferring any of its functions under Parts II, III or IV of this Act to any person other than the City Council or the rivers authority without the consent of the City Council and the rivers authority; or
  - (d) transferring any of its functions under Part V or section 57 (Application of Act to Feeder Canal and Floating Harbour) of this Act to any person other than the City Council without the consent of the City Council.
- (3)
  - (a) Consent under subsection (2) (c) or (d) above shall not be unreasonably withheld, and any difference as to the withholding of such consent (other than a difference as to meaning or construction) shall be referred to and settled by arbitration.
  - (b) The withholding of consent to the transfer of any function to any person under subsection (2) (c) or (d) above shall be deemed to be unreasonable if consent to the transfer of that function under subsection (2) (b) above has also been withheld, unless consent has been given to the transfer of that function to some other person who has agreed to accept such transfer and who is acceptable to the Corporation.
- (4) Before in any case making application to the Secretary of State under subsection (1) above the Corporation shall give not less than three months' notice of its intention in that behalf to the City Council and the rivers authority and shall forward with the application any written representations submitted to the Corporation by that council or authority within the period of such notice.

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## **62 Obstructing execution of Act**

A person who intentionally obstructs any person acting in the execution of this Act, or without reasonable excuse pulls up any peg or stake driven into the ground for the purposes of setting out the line, level or site of any works authorised by this Act, or otherwise intentionally or recklessly interferes with equipment or materials used in the construction of those works, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **63 Defence of due diligence**

- (1) In proceedings for an offence under the provisions of this Act mentioned in subsection (2) below it shall be a defence for the Corporation to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The provisions referred to in subsection (1) above are the following:—  
section 20 (Provision against danger to navigation); and  
section 23 (Lights on tidal works).
- (3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Corporation shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information as was then in its possession, identifying, or assisting in the identification of, that other person.

## **64 Restriction on powers of Corporation**

For the purposes of section 138 of the Local Government, Planning and Land Act 1980 (which permits restrictions to be imposed on the exercise of the powers of an urban development corporation under that Act) that section shall apply to the powers of the Corporation conferred by or by virtue of this Act as if they were powers under that Act.

## **65 Modification of Town and Country Planning General Development Order 1988**

- (1) In their application to development authorised by this Act, article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to such development begun within 10 years after the passing of this Act.
- (2) Subject to subsection (3) of section 40 (Works in impounded river) of this Act, for the purposes of article 3 of, and Class B in Part 17 of Schedule 2 to, the said Order of 1988 (which permit development by dock, pier, harbour, water transport, canal or inland navigation undertakers) the Corporation shall, in relation to the undertaking authorised by this Act, be deemed to be an undertaker carrying on an undertaking within the description of that Part.

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## 66 Arbitration

Where under any provision of this Act any difference (other than a difference as to the meaning or construction of any such provision) is to be referred to and settled by arbitration, then, unless otherwise provided, such difference shall be referred to and settled by a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other)—

- (a) in any case where a difference arises under the following provisions of this Act:—
  - subsection (6) (a) of section 40 (Works in impounded river);
  - section 53 (For protection of port authority);
  - subsection (5) of section 58 (Management arrangements);
  - subsection (3) of section 61 (Transfer of functions); by the President of the Institute of Arbitrators;
- (b) in any other case by the President of the Institution of Civil Engineers.